

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MPE, INC.

and

Case 09-CA-084228

RICHARD RANKIN

and

Case 09-CA-084595

NATHAN RANKIN

ORDER DENYING MOTION¹

The Respondent's Renewed and Amended Motion for Summary Judgment or alternatively, Motion to Dismiss and compel arbitration is denied.² The Respondent has failed to establish that there are no material issues of fact warranting a hearing and that it is entitled to summary judgment as a matter of law, or that the allegations are barred by the equitable doctrine of laches.³ Further, we decline to defer the complaint allegations to arbitration in this matter, where the Respondent has not agreed to waive

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² We agree that references to the Charging Parties' criminal records are not relevant to the disposition of the pending motion. However, in light of the General Counsel's pleadings, which referenced the Charging Parties' incarceration, we deny the General Counsel's request that the Board strike from Respondent's motion all references to the Charging Parties' criminal records.

³ Member Johnson expresses no opinion on the merits of the Respondent's laches defense at this juncture. He agrees with the Respondent that "at some point laches [will] apply against the Board for inordinate delay in bringing an action." *Pleasantview Nursing Home v. NLRB*, 351 F.3d 747, 765 (6th Cir. 2003) (quoting *NLRB v. Mich. Rubber Prods.*, 738 F.2d 111, 113 (6th Cir.1984)). However, although counsel for the General Counsel does not specifically argue in his opposition that there is a factual dispute preventing summary judgment on the basis of laches, he generally argues facts that would undermine the defense, e.g., that no prejudice existed to the Respondent. In this circumstance, Member Johnson finds that the laches defense is inappropriate for disposition on summary judgment.

the procedural issue of timeliness. See *United Technologies Corp.*, 268 NLRB 557, 560 fn. 22 (1984).

Dated, Washington, D.C., January 29, 2015

PHILIP A. MISCIMARRA,	MEMBER
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KENT Y. HIROZAWA,	MEMBER
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HARRY I. JOHNSON, III,	MEMBER
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